

2026-27 Public Officials' Risk Management Seminar

MEL

This seminar is designed to provide a general understanding of the legal principles pertaining to governmental operations.

Seek the advice of your local government's attorney to evaluate any case or circumstance.



NJ Government Property/Casualty Insurance Costs

Over **$1.5 Billion - $600 Million** is Municipal

- 43% Workers' Compensation
- 29% Liability
- 24% Property including fires, floods, and other damage to government assets
- 2% Cyber
- 2% Environmental



NJ Government Property/Casualty Insurance Costs

Over **$1.5 Billion - $600 Million** is Municipal

- How elected officials can reduce this cost for their towns or local authorities?
- What you need to know about protection yourself from lawsuits?

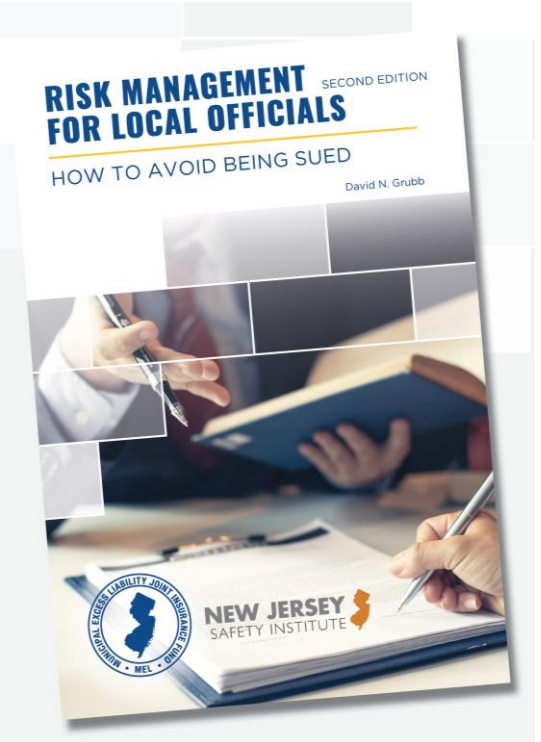


Risk Management

Many Local Officials are worried about personal liability because local government has become more contentious.

The Risk Management strategies discussed in this seminar are detailed in a new book:

“How to Avoid Being Sued.”





Workers' Compensation – 43%

- New Jersey has the highest Workers' Compensation rates in the country.
- Local Government has one of the highest employee accident rates of any occupation.

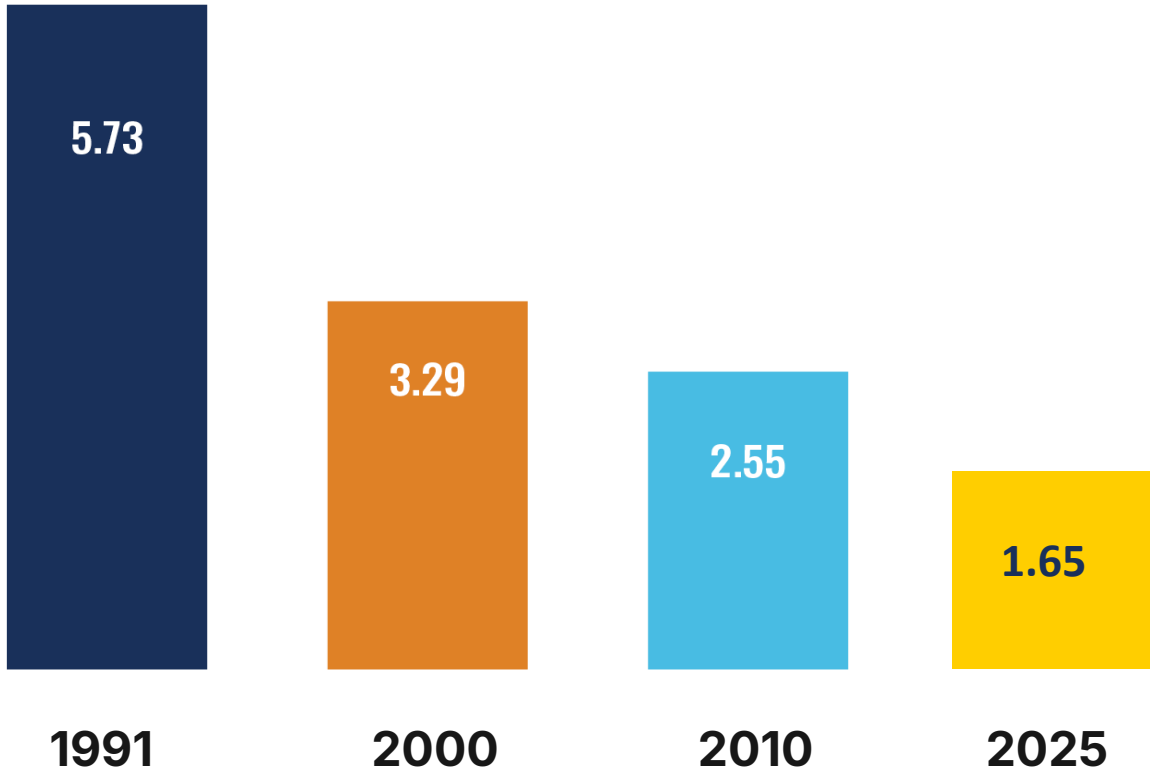
Workers' Compensation – 43%



- 46% Public Works
- 34% Police
- 9% Fire
- 4% EMS
- 4% Administration
- 3% All Others

Over Time, Management CAN Substantially Reduce Accident Rates

MEL Employee Accident Rate
Lost Time Accidents
Per 100 Employees





Employee Safety Program

Monitor safety performance:

- Managers communicate their priorities by what they monitor.
- The risk management program should be a monthly agenda item on the governing body’s workshop agenda.

Require all personnel to complete a safety orientation and periodic refresher training.



Liability: 29% of Total P&C Budget

Most Plaintiff Friendly Court Systems

The cost of liability coverage is increasing at a fast rate because judges are now reluctant to grant summary judgement dismissing even frivolous claims.



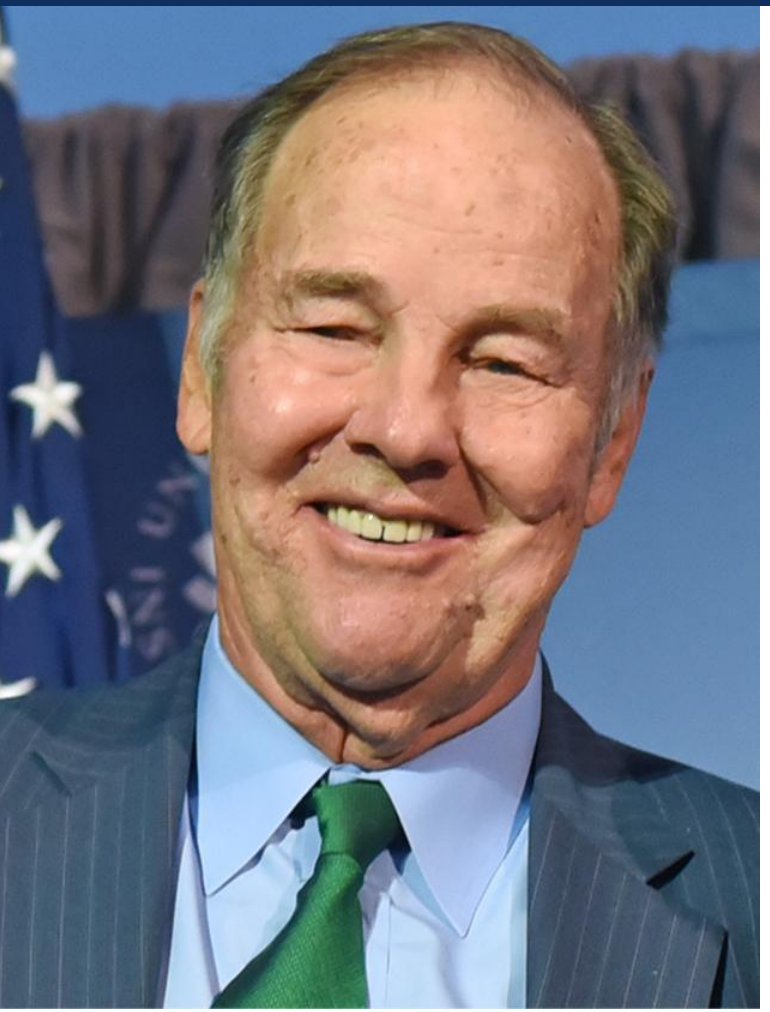
Governor Walter E. Edge
1917-1919 & 1944-1947

53% of Employment Cases Involve Discrimination

NJ Law Against Discrimination (LAD)
Adopted 1945

While overt racial or gender discrimination is now rare in the public sector, today we see far more discrimination lawsuits arising from promotional disputes.

That is why a formal management succession plan is so important.



Governor Thomas Kean
1982-1990

33% of Employment Cases Involve Discipline & Termination Disputes

Conscientious Employee Protection Act (CEPA)
Adopted 1985

The original intent of CEPA was to prevent the so-called **“Serpico”** situation where a governmental employee is fired or demoted in retaliation for focusing the spotlight on official activity that harms or potentially harms the general public.



13% of Employment Cases Involve Harassment

"A recent survey found that **38 percent** of women reported being sexually harassed at work sometime during their careers.

Sexual harassment affects people regardless of race, religion, gender, sexual orientation, gender identity or expression."



Justice Garibaldi

Lehman v. Toys R Us

- Policies Prohibiting Discrimination and Harassment
- Complaint Structures (Formal & Informal)
- Training: (Mandatory for Management & provided to all Employees)
- Monitoring Mechanisms
- Unequivocal Management Commitment



Claims Against Government Entities

Because the decisions of local government impact everything that happens in a community, almost any accident would result in a lawsuit against the town unless there is some reasonable limitation on suits.



Law Enforcement Liability

The largest single liability exposure is policing which inherently involves discretion, such as the decision to arrest someone.

The MEL's Safety Department includes retired command police officers to assist departments implement risk control programs.



Accidents on Public Property

- Title 59 provides broad immunity for injuries resulting from a defective design of public property.
- This immunity applies to any public project after approved by the governing body. This approval should be done by resolution.
- Once design immunity is triggered, it remains in force even if safety standards subsequently change.



Accidents on Public Property

- Even with design immunity, governments are still required to properly maintain their facilities.
- For example, most communities have miles of sidewalks, and it is not possible to immediately repair every defect.
- Under **Title 59** scarce resources immunity, communities can adopt an orderly program over time to correct hazards so long as the program is not "*palpably unreasonable*."



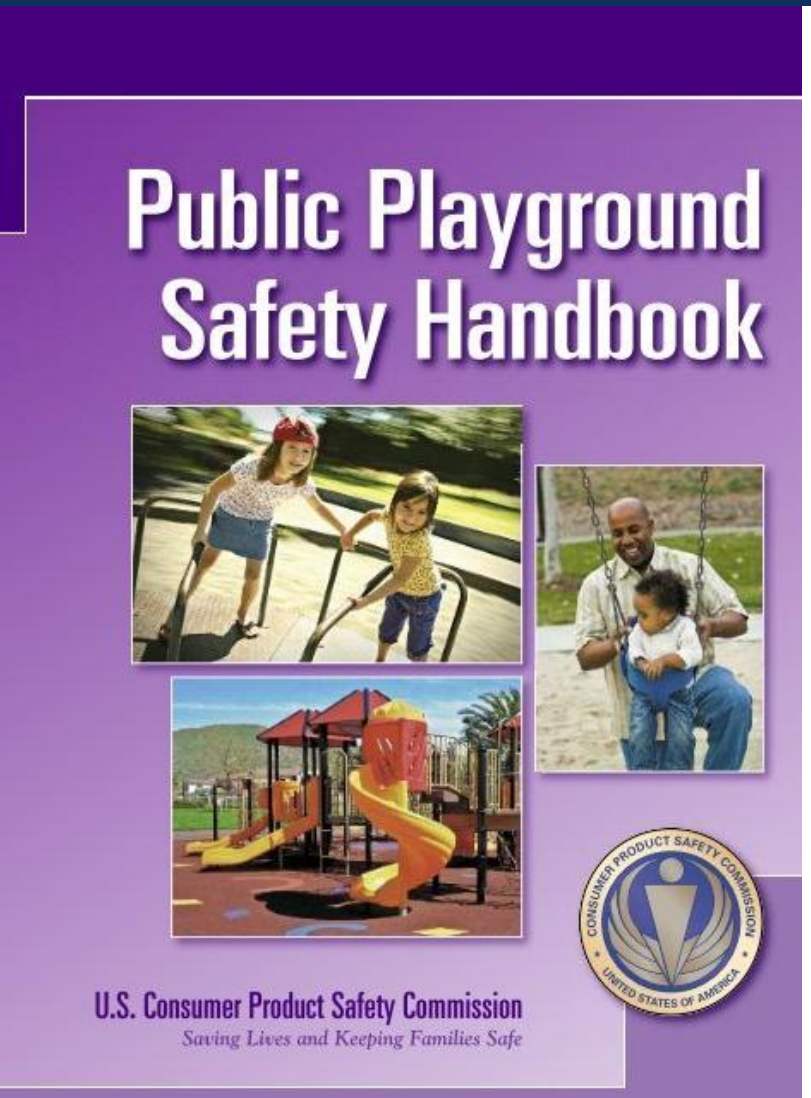
Child Abuse

- Each year, New Jersey receives reports on **80,000** abused children.
- The legislature has extended the statute of limitations to **age 55**, or later under some circumstances.



Child Abuse

- All governmental entities must have policies and procedures to deal with child abuse.
- An effective program must start with background checks of all prospective employees and volunteers including fingerprint identification.
- Everyone must be trained.



Playgrounds

- **180,000** playground injuries are reported each year.
- The *Consumer Product Safety Commission* developed the playground safety standards adopted by New Jersey.
- Every playground should be inspected at the beginning of the year and then reinspected at least monthly.



Recreational Sports

- Each year more than one million Americans are injured during recreational sports.
- The **Rutgers SAFETY Clinic** course was upgraded to include training in sports concussions. All coaches, referees, and other officials should be required to complete **Rutgers SAFETY Clinic** course, or a similar course, and submit the documentation for the town's records.
- Parents should also be encouraged to take a course.



Pedestrian Safety

- After years of improvement, pedestrian accidents have increased **46%** over the last decade.
- Because of **Title 59** immunities, this issue does not significantly impact your insurance budget.
- Pedestrian safety is very much on the mind of your voters. This section also discusses bicycle safety.





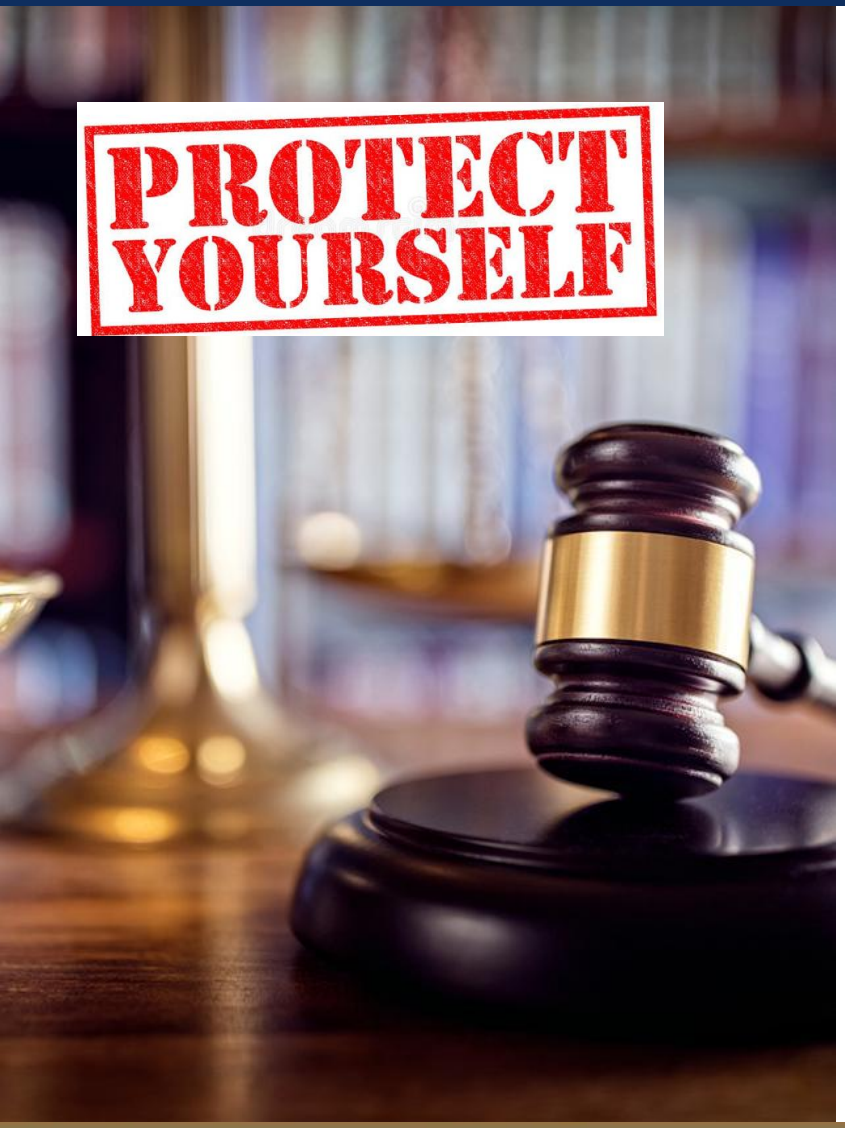
Property: 24% of Total P&C Budget

- Property insurance costs are increasing at a rate much faster than inflation because weather patterns are changing.
- The number of major weather-related natural catastrophes worldwide has **almost tripled** since 2000.



Property

- The safety committee should arrange for a semi-annual inspection of all facilities to identify and correct fire and other property hazards.
- Much of this is basic housekeeping.
- The inspection must also include the fire suppression systems (sprinklers, etc.), emergency exit lighting, generators, and other critical equipment.



Immunity & Insurance

- While officials, employees, and volunteers enjoy broad immunities under **Title 59**, insurance and indemnification come into play when the immunities do not apply.
- It is imperative that your local government retain a knowledgeable Risk Manager.
- Holes in coverage can occur if the terms and conditions of individual policies are not coordinated.



Insurance Coverage

Governmental insurance policies cover a broad range of officials, employees, and some volunteers.

- Local elected officials are employees and enjoy all immunities and protections afforded to employees even if they are not paid.
- Some volunteers are also covered by the property and casualty insurance policies, specifically, volunteer firefighters, first-aid workers, and reserve or auxiliary police.



Insurance Coverage

- Non-emergency volunteers may also be covered by most local government insurance except workers' compensation, depending on the circumstances.

Check with your local government's Risk Manager to determine the coverage for volunteers.



Insurance Coverage

Local government insurance policies only apply if the official, employee or covered volunteer is **“on duty”**

- The individual was acting in a matter in which the local government has an interest.
- The individual was acting in the discharge of a duty imposed or authorized by law.
- The individual was acting in good faith.



Exceptions

- Electioneering is not covered because it is not in the discharge of duty.
- While General Liability policies cover defamation under limited circumstances, they exclude lawsuits between officials, employees, and volunteers.



Exceptions

- Liability policies do not cover punitive and similar damages.
- Policies do not cover defense costs for criminal matters, even if you are acquitted.



Exceptions

- Standard homeowner's or personal umbrella policies often exclude coverage for officials while performing their official duties.
- Talk to your personal insurance agent about policies specifically designed for public officials.
- It is always good practice to immediately report any potential claim.



Indemnification

- A well drafted indemnification ordinance is critical to protect you from some of the exposures that insurance cannot cover.
- An ordinance is important because local governments are only “empowered” to indemnify and must act to define the limits of this coverage.
- Talk to your municipal/authority attorney. MEL distributes a model indemnification ordinance.

TAKE AWAY

1. Constantly take training. At a minimum, everyone in local leadership position needs to complete courses on ethics, employment practices and child abuse.
2. Select professionals who know how to avoid and settle conflicts. Your attorney and manager should be calming voices.
3. Talk to an attorney BEFORE you do something. That means the attorney for the municipality or authority, not your cousin.



4. Let it simmer overnight. While you are sleeping, your brain rethinks everything you experienced during the day and often has a fresh perspective.

5. Reasonable people can take the same facts and come to different conclusions reasonably.

6. Know *Robert's Rules of Order* and establish the rules at reorganization. The MEL publishes a model decorum resolution. You need to establish the rules upfront to have any chance of enforcing them.

TAKE AWAY

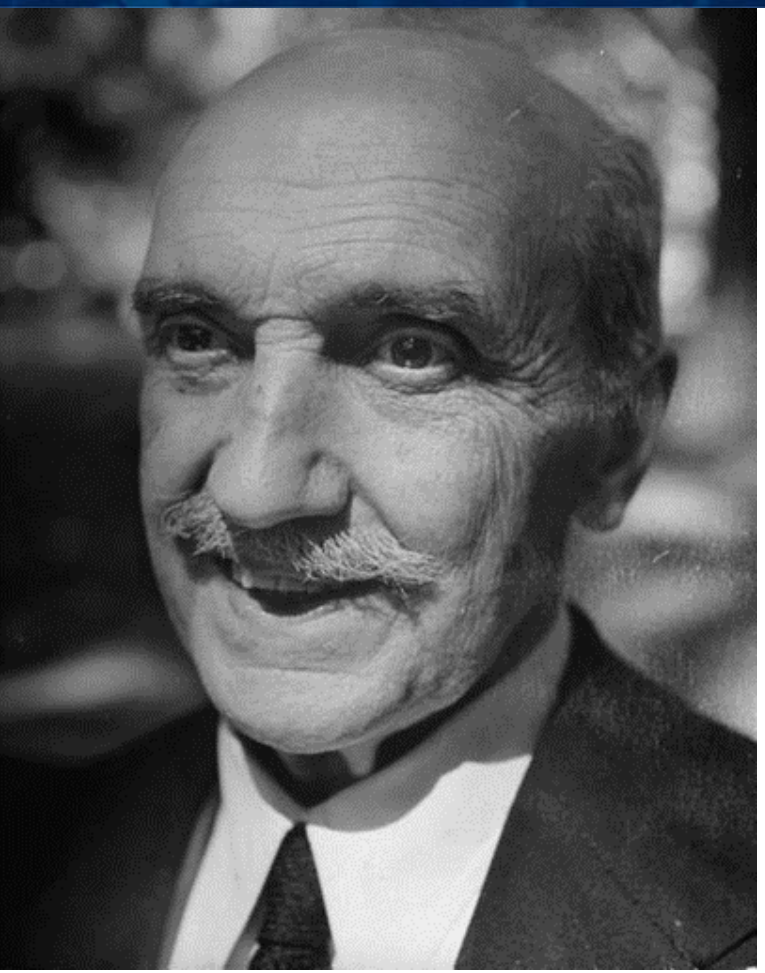
7. Enact a meeting curfew and speaker limits.
8. Consistently enforce rules of order. You can't call a point of order on an opponent for something you allow supporters to get away with.
9. Avoid getting into a debate with the public. Insist that everything must go through the chair.
10. Recess when things get hot. Let things calm down before proceeding.

VIDEO PRESENTATION



Click to View

Case Studies



George Santayana
1863-1952

“Those who cannot remember history are condemned to repeat it.”

Life of Reason 1905

Case Study 1: State v. Charzewski (2002)

1. At a Belleville council meeting, a resident was repeatedly told to address the chair, ran over his time limit, and interrupted a council discussion.
2. Warned that another outburst would get him removed, he kept talking. He left voluntarily with a police escort. Two days later, a police officer who had been at the meeting filed a criminal complaint.

Was the speaker guilty of the disorderly persons offense of disrupting a public meeting?

Case Study 1: State v. Charzewski (2002)

NO: The Appellate Division reversed his conviction and ordered an acquittal.

The Court wrote that:

> "The speaker's conduct may have been rude and excessive, but it was not criminal. Not every interruption constitutes a criminal disruption."

Case Study 2:
Houston Community College System v. Wilson (2022)

1. A trustee of the Houston Community College System frequently criticized the other trustees.
2. The Board censured him. It also made him ineligible for Board officer positions for a year and ineligible for travel reimbursement.
3. The "gadfly" trustee sued.

Did the censure violate the plaintiff's civil rights?

Case Study 2:
Houston Community College System v. Wilson (2022)

NO: The court ruled that a purely verbal censure does not give rise to an actionable First Amendment claim.

The Court did not decide whether the officer ban and other penalties were lawful.

Case Study 3: Besler v. Board of Education of West Windsor-Plainsboro (2010)

1. A parent complained to a BOE that a coach used profanity with a girls' basketball team. When the parent didn't receive what he considered to be a satisfactory response, he filed suit.
2. For eight consecutive meetings, he spoke about the case and criticized the coach personally.
3. Before recognizing him at the ninth meeting, the board president announced that public comment was not for complaints about staff or matters in litigation, and that the chair could cut off such remarks.

Case Study 3: Besler v. Board of Education of West Windsor-Plainsboro (2010)

4. About 30 seconds into his remarks, the president banged the gavel four times: “You are out of order. We’ve heard those comments before several times from you.”

5. A jury found for the parent and awarded $100,000. The Board appealed to the NJ Supreme Court.

Did the Board of Education violate the parent’s rights by cutting him off after he repeated himself in numerous meetings, verbally attacked employees and talked about pending litigation?

Case Study 3: Besler v. Board of Education of West Windsor-Plainsboro (2010)

YES: The New Jersey Supreme Court upheld the verdict.
The president, running public comment, was the Board's "final policymaker," and other speakers ran far past the time limit.

The Court found the $100,000 award excessive and ordered it reduced.

Case Study 4: Galena v. Leone (2011)

1. A resident often objected to council spending during the public comment period of Erie County (Pennsylvania) Council meetings.
2. One night, later in the meeting, he objected that the process the council was using to adopt ordinances was illegal.
3. He had spoken during public comment 14 or 15 times without incident. The council chairman was a 32-year veteran.

Case Study 4: Galena v. Leone (2011)

4. This time, the chairman gaveled him down mid-objection and had him removed when he refused to stop. It was the first time in 32 years the chairman had anyone removed.

5. A jury found the removal was viewpoint discrimination and awarded him $5,000.

Did the jury's verdict survive?

Case Study 4: Galena v. Leone (2011)

NO: The trial judge set aside the verdict, and the federal appeals court affirmed. Limiting public comment to its designated time was a reasonable, viewpoint-neutral rule, and there was no evidence the chairman removed him because of his viewpoint.

Case Study 5: Al Falah Center v. Bridgewater (2014)

1. A Muslim congregation proposed a conforming mosque and educational center on a site of a former hotel in a residential zone.
2. Within about two months, the Council adopted an ordinance requiring houses of worship in residential zones to have principal access on a state highway, county road, or one of four listed roads. Otherwise, a conditional use variance was needed.
3. An estimated 400 to 500 people packed the first hearing. At a later meeting, members of the audience shouted, booed and said things like “Get out of Bridgewater.”

Case Study 5: Al Falah Center v. Bridgewater (2014)

Could the town apply the new ordinance to the mosque, even though houses of worship were still allowed in every zone?

Case Study 5: Al Falah Center v. Bridgewater (2014)

NO: The federal court blocked the town from enforcing the ordinance against the mosque. Quoting earlier cases, it wrote:

> "[B]are animus towards a group or 'fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding' may constitute sufficient evidence for a zoning ordinance to fail under an equal protection challenge."

Case Study 6:
Quaglietta v. Borough of Haledon (1981)

1. The mayor was dissatisfied with the new Police Chief's performance and asked him to resign.
2. When he did not, the governing body created the position of "Director of Police" above him.
3. The Chief sued, contending that the action was nothing more than an attempt to demote him without just cause or a hearing.

Could the town put a police director over the chief?

Case Study 6:
Quaglietta v. Borough of Haledon (1981)

NO: The chief had tenure from the day he was appointed. Putting a director over him was a demotion, which requires just cause and a hearing.

The ordinance also conflicted with the 1981 amendment to N.J.S.A. 40A:14-118.

Case Study 7: Newman v. Delahunty (1996)

1. A candidate for Mayor of Brick Township put out a campaign newspaper, the Bricktown Investigator, attacking the incumbent mayor as corrupt.
2. One flyer showed a “Dan Dollar” with the mayor’s face and a quarter labeled “Newman’s Florida Investments.”
3. The mayor sued for defamation. The candidate represented himself.

Was the would-be newspaper tycoon liable for defamation?

Case Study 7: Newman v. Delahunty (1996)

YES: After a bench trial, the judge awarded the mayor $200,000 in punitive damages, plus $1,000 in nominal damages and $13,388.49 in legal fees.

The Appellate Division affirmed.

Case Study 8: O'Connor-Ratcliff v. Garnier (2024)

1. Two school board trustees created public Facebook pages for their campaigns. One also had a public Twitter page. Once elected, they listed their official titles and posted about district business.

2. Two parents posted long, repetitive, critical comments.
   The trustees hid or deleted them, then blocked the parents.

Did blocking the parents from these pages violate their civil rights?

Case Study 8: O’Connor-Ratcliff v. Garnier (2024)

YES: In a companion case, **Lindke v. Freed**, the U.S. Supreme Court held that blocking is state action if the official:

(1) had actual authority to speak for the government on the matter, and
(2) purported to use that authority in the posts.

On remand in 2025, the court again ruled against the trustee still in office.

Case Study 9:
NJ Environmental Federation v. Monroe (2008)

1. Monroe's canvassing ordinance required canvassers to register with the township and set an evening curfew.
2. The NJ Environmental Federation challenged these provisions as so restrictive that they effectively violated the Federation's Freedom of Speech.

Did the ordinance pass constitutional muster?

Case Study 9:
NJ Environmental Federation v. Monroe (2008)

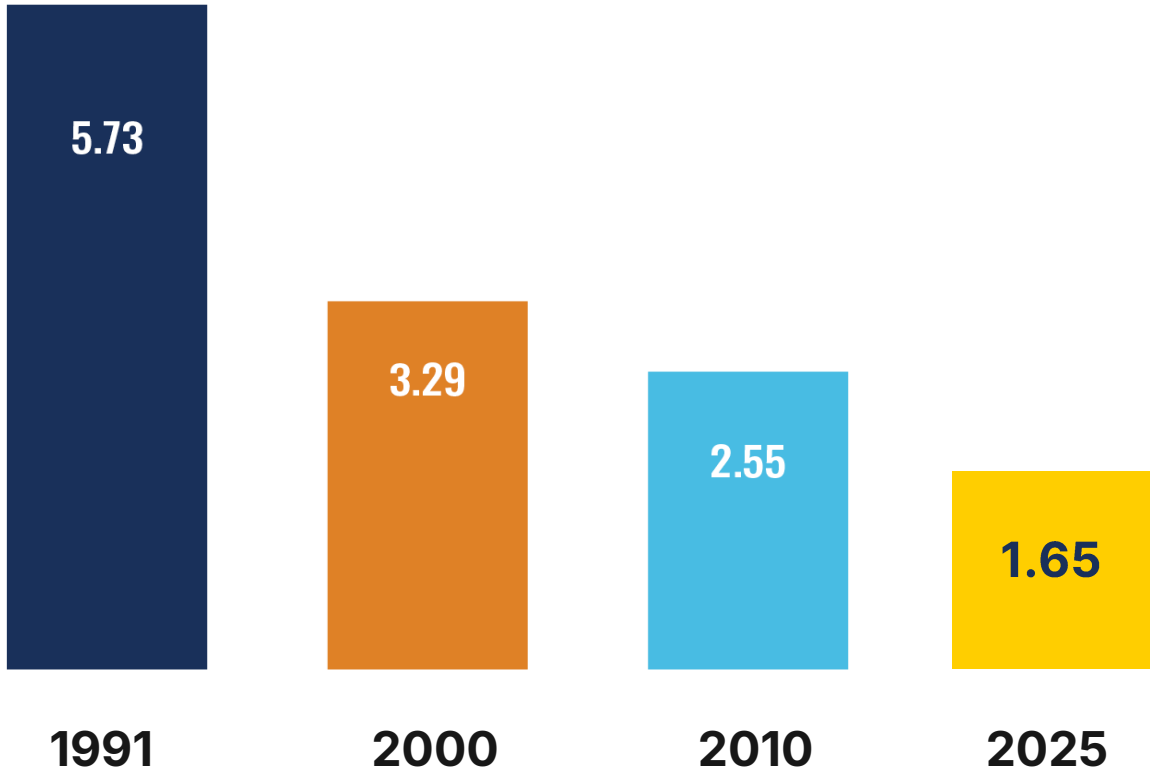
NO: The federal court ruled the registration and curfew provisions unconstitutional.

The regulations were deemed not narrowly tailored to the township's asserted interests in public safety and citizen privacy.

The plaintiff was a nonprofit advocacy group. The case limits what a town can require of noncommercial canvassers before they knock.

Over Time, Management CAN Substantially Reduce Accident Rates

MEL Employee Rate
Lost Time Accidents
Per 100 Employees





Conclusion

- Your best line of defense is an experienced municipal or board attorney. Seek their advice before doing something.
- Insist that they tell you what you should hear, not what you want to hear.
- Watch what you say, especially in executive sessions and in electronic communication.
- Don’t use personal computers and personal e-mail addresses on official business.


Any
QUESTIONS?